

REMARKS

The Examiner, in response to Applicant's previous arguments, quoted *In re Oetiker*, "that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a bias for rejection of the claimed invention." The Examiner argues that "Brugada clearly falls in the authentication, fraud detection and security arts." However, Brugada is particularly directed to a security support with an imprinted micropatent pattern contained thereon which prevents falsification of documents when high resolution copiers are used. Thus, the patent itself describes the field of endeavor and the technology to which it is directed. This is in contrast to the present invention which relates to an article, system and method that can be used for creating an identification markers used for authentication of documents. Thus, Brugada is directed to a security support system to use to prevent falsification of documents. The Brugada reference solves their problem by providing micro pattern on the document which is transparent or of the same color as the support which prevents the falsification of the document when high resolution copier machines are used. This is in contrast to the present invention wherein there is provided making at least one micro discrete continuous tone image on a photosensitive media wherein said discrete continuous tone image is formed on a photosensitive media capable of producing a continuous tone image using near field optics and its continuous tone image is less than about .015 mm. It is clear that the Brugada reference does not teach or suggest providing discrete continuous tone images of the scale to which the present invention is directed.

In response to Applicant's argument of hindsight reconstruction, the Examiner sets forth "that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper." However, Applicant respectfully submit that there is no showing that the combination takes into consideration the level of ordinary skill in the art. The Guerra et al. reference, while disclosing use of near field optics, does not teach or

suggest either providing a continuous tone image but is simply directed to producing marks for data storage. Thus, one of ordinary skill in the Guerra et al. reference is directed to producing of marks for storage whereas one of ordinary skill in the Brugada reference is one directed to producing a security support for preventing copying. The two are directed to totally different technologies and for solving two totally different problems. The Guerra et al. reference is directed to storing data using marks whereas Brugada is directed to providing a security support for preventing copying.

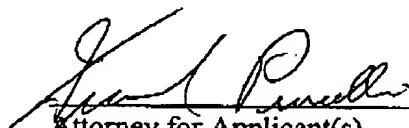
As the CAFC has stated *In re Lee* 277 Fed 3rd 1338 (61 USPQ 2nd 1433) 2002:

"factual inquiry whether to combine references must be thorough and searching." *Id.* it must be based on objective evidence of record. This precedent has been reinforced in myriad decisions Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references there must be some motivation, suggestion, or teaching of the desirability of making the specific combination that was made by the applicant."

Applicants have shown that the Brugada and Guerra et al. references are directed to two totally different technologies and solve two different type problems. There is no motivation why one of ordinary skill in the art to which the present invention is directed would look to either of these and combine the teachings thereof. The Guerra et al. reference does not teach a single tone for producing images, and is not directed for producing markers that can be used for authentication. Brugada et al. reference does not teach or suggest using near field optics to produce a continuous tone image as taught and claimed by applicant.

In view of the foregoing it is respectfully submitted that the claims in their present form are in condition for allowance and such action is respectfully requested.

Respectfully submitted,


Attorney for Applicant(s)
Registration No. 27,370

Frank Pincelli/phw
Rochester, NY 14650
Telephone: 585-588-2728
Facsimile: 585-477-4646